

**Letter of Findings Number: 04-20110482**  
**Sales/Use Tax**  
**For Tax Years 2007 and 2008**

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**ISSUES**

**I. Sales/Use Tax—Equipment.**

**Authority:** IC § 6-8.1-5-1(c); IC § 6-2.5-3-2(a); IC § 6-2.5-3-4; IC § 6-2.5-5-2; [45 IAC 2.2-5-4](#); [45 IAC 2.2-5-3](#)(d).  
Taxpayer protests the imposition of use tax on equipment.

**II. Tax Administration—Penalty and Interest.**

**Authority:** IC § 6-8.1-5-1(c); IC § 6-8.1-10-1(e); IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#)(b),(c).  
Taxpayer protests the imposition of a ten percent negligence penalty, and the assessment of interest.

**STATEMENT OF FACTS**

Taxpayer purchased the following items exempt from tax in the years 2007 and 2008: (a) JD 650H Dozer; (b) KD 160C Excavator; and (c) JD 200D Excavator. The Department assessed tax on the equipment.

Taxpayer filed a protest. An administrative telephone hearing was conducted and this Letter of Findings results. Further facts will be supplied as required below.

**I. Sales/Use Tax—Equipment.**

**DISCUSSION**

The Department initially notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c). Indiana imposes "an excise tax, known as the use tax," on tangible personal property that is acquired in retail transactions and is stored, used, or consumed in Indiana. IC § 6-2.5-3-2(a). An exemption from the use tax is granted for transactions when sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4. Since Taxpayer failed to pay sales tax at the time of the purchase, the Department found that the equipment was subject to use tax.

Taxpayer states in its protest letter the following:

[Taxpayer] owns farmland and is dependent on the production of food. The questioned items of equipment were used for waterways, terracing, subsurface and surface drainage of the fields. These activities are vital process of planting, maintain drainage while the crop is growing (so it doesn't drown out or drown down and is accessible for fertilizer and/or chemical application), and allowing access for harvesting.

IC § 6-2.5-5-2 states:

(a) Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.

(b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:

(1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;

(2) the person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food and food ingredients or commodity production; and

(3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

(Emphasis added).

Also of importance is [45 IAC 2.2-5-4](#), which states:

(e) The fact that an item is purchased for use on the farm does not necessarily make it exempt from sale [sic.] tax. It must be directly used by the farmer in the direct production of agricultural products. The property in question must have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural products. The fact that a piece of equipment is convenient, necessary, or essential to farming is insufficient in itself to determine if it is used directly in direct production as required to be exempt.

(Emphasis added).

Taxpayer's equipment thus does not come within the scope of agricultural production. As [45 IAC 2.2-5-3](#)(c) notes:

(6) Purchases of watering tubs and troughs and tile for drainage are taxable.

Further, the Department notes that the list of taxable items found at [45 IAC 2.2-5-4](#) includes, but is not limited to: "drains," "[f]ield tile or culverts," and "[g]raders, ditchers, front end loaders, or similar equipment (except equipment designed to haul animal waste)." Taxpayer's use of the equipment for "waterways, terracing,

subsurface and surface drainage of the fields" does not meet the double direct test found in IC § 6-2.5-5-2(a), and is thus subject to assessment for use tax.

#### FINDING

Taxpayer's protest is respectfully denied.

#### II. Tax Administration—Penalty and Interest.

#### DISCUSSION

Taxpayer was also assessed a ten percent negligence penalty. Taxpayer was also assessed interest. Regarding interest, the Department notes that under IC § 6-8.1-10-1(e), that interest cannot be waived.

Penalty waiver, however, is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides in relevant part:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

As noted above, reasonable cause regarding penalty is a "fact sensitive question." In its protest letter, Taxpayer does not develop its argument regarding the penalty. And at hearing, Taxpayer asserted that it was not clear to Taxpayer that tax was owed and that it was trying to do things correctly. Under IC § 6-8.1-5-1(c) Taxpayer bears the burden of proof regarding its argument. Taxpayer has failed to meet its burden of proof.

#### FINDING

Taxpayer's protest of the negligence penalty and interest is respectfully denied.

#### SUMMARY

Taxpayer's protest of the equipment is respectfully denied; Taxpayer's protest of the negligence penalty and interest is also denied.

*Posted: 05/30/2012 by Legislative Services Agency*

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